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No. 06-1609

FILED

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SUPREME COURT, U.S.

IN THE

United States Supreme Court

2006 TERM

JONATHAN HAKALA,

Petitioner,

v.

J.P. MORGAN SECURITIES, INC.,

Respondent.

On Petition For A Writ of Certiorari To The United States Court of Appeals for the Second Circuit

BRIEF OF RESPONDENT J.P. MORGAN SECURITIES, INC. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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(admission pending)

Respondent J.P. Morgan Securities, Inc. ("JPMSI") submits this Brief in Opposition to the Petition for a Writ of Certiorari of Petitioner Jonathan Hakala ("Petitioner" or "Hakala").

Petitioner seeks to have the Court revisit an issue that has long since been decided—whether in an action brought in federal court pursuant to diversity jurisdiction, the timeliness of the suit is determined by the statute of limitations set forth by the state or the federal rules. The Court has already decided that issue and has held that state law applies. *Walker v. Armco Steel Corp.*, 446 U.S. 740, 753 (1980) ("There is simply no reason why, in the absence of a controlling federal rule, an action based on state law which concededly would be barred in the state courts by the state statute of limitations should proceed through litigation to judgment in federal court solely because of the fortuity that there is diversity of citizenship between the litigants."). Petitioner has failed to present any reason why the Court should grant his Petition to reconsider the *Walker* holding.

Petitioner sought to vacate an arbitration award in the United States District Court, Southern District of New York. Jurisdiction was based on diversity pursuant to 28 U.S.C. § 1332. *See* Hakala's Petition, p. 2 ("Subject matter jurisdiction in the District Court was based on 28 U.S.C. § 1332.") His petition was filed more than ninety days after delivery of the award to him. The District Court and Court of Appeals applied New York law which specifically provides that "[a]n application to vacate or modify an [arbitration] award may be made by a party within ninety days of its delivery to him." New York CPLR § 7511(a). Because he filed beyond the 90 days

limitations period set forth by New York law, Hakala argues that the statute of limitations is instead governed by the provisions of the Federal Arbitration Act (the "FAA"), 9 U.S.C. § 12, which provides that a "[n]otice of motion to vacate, modify or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered."

Petitioner's arguments to apply the provisions of the FAA rather than New York's statute of limitations for filing an action to vacate award need not be addressed by the Court. The Court already has decided the issue whether the state or federal statute of limitations applies in actions proceeding in federal court based on diversity jurisdiction and rejected Petitioner's position. *See Walker, supra; West v. Conrail*, 481 U.S. 35, 39 fn. 4 (1987) ("When the underlying cause of action is based on state law, and the federal jurisdiction is based on diversity of citizenship, state law not only provides the appropriate period of limitations but also determines whether service must be effected within that period of time."). There is no conflict among the federal circuit courts on this issue. *See, e.g., Local 802, Assoc. Musicians of Greater New York v. Parker Meridien Hotel*, 145 F.3d 85 (2nd Cir. 1998) (applying 90 day provision in New York's CPLR rather than 9 U.S.C. § 12); *Converse v. General Motors Corp.*, 893 F.2d 513 (2d Cir. 1990) (applying state rather than federal law and dismissing an action in federal court based on diversity as not timely commenced); *Mest v. Cabot*, 449 F.3d 502, 510 (3rd Cir. 2006) ("Because this is a diversity action, we look to Pennsylvania law to determine whether the District Court properly dismissed the plaintiffs' actions for failure to comply with the statute of limitations."); *Atlantic Richfield Co. v.*

Monarch Leasing Co., 84 F.3d 204, 205 (6th Cir. 1996) ("The statute of limitations of the forum state applies in federal diversity cases pursuant to [Walker]."); *Burnham v. Humphrey Hospitality Reit Trust, Inc.*, 403 F.3d 709, 712 (10th Cir. 2005) ("A federal court sitting in diversity applies the state law for statute of limitations purposes."); *Spring v. Brown*, 05 Civ. 3047 (FVS), 2007 WL 26766 (E.D. Wash. Jan. 3, 2007) ("When a state law claim is before a federal court, 'the state statute of limitations controls.'")

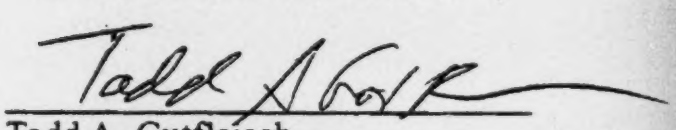
Petitioner argues that "the Court of Appeals have expressed sharply differing views on whether the statute of limitations under the FAA for filing to vacate, modify or correct an arbitration award is three months or 90 days." *See* Hakala's Petition, p. 3. Such different readings, to the extent they exist, are irrelevant in that the applicable statute of limitations in a diversity action is determined by state law.

For the reasons stated herein, the Court should deny Mr. Hakala's petition for writ of certiorari.

Dated: New York, New York
July 2, 2007

Respectfully submitted,

JPMORGAN CHASE LEGAL
& COMPLIANCE DEPARTMENT

By: 

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